IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2002

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THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

T.C.No.28 of 1999

The Commissioner of Gift-tax,
Coimbatore. ..... Applicant

-Vs-

D.Nagrirathinam. ..... Respondent.

Reference arising out of the order of the Income-tax Appellate Tribunal, D-Bench, Madras in G.T.A.No.36/Mds/92, dated 5.3.1996, at the instance of the Revenue.

!For applicant :: Mrs.Pushya Sitharaman, Sr.SC for IT.

^For respondent :: No appearance

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

This is a reference under the Gift Tax Act, 1958, and in pursuance of the direction of this Court, the Income-tax Appellate Tribunal has stated a case and referred the following questions of law for our consideration:-
1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law and also had valid materials in holding that transaction by which a self-acquired property of the assessee was alienated in favour of her son by way of a partition deed is only a family arrangement and therefore, is outside the purview of the Gift-tax Act?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law and also had valid materials in holding that the transaction by which the assessee leased out the properties to her husband and two daughters at a lease rent which is far below the annual income of the property is only a family arrangement and is outside the purview of the Gift-tax Act?

2. The assessee is an individual and the assessment year with which we are concerned is 1988-89. The assessee is the owner of a half share

in the building known as 'SRM Lodge' at E.V.N. Street, Erode which consisted of ground floor and first floor. She also owned a residential house at No.13, Pumping Station Road, Erode and a building at No.29, Pumping Station Road, Erode. The assessee's husband became an insolvent and the assessee along with her son carried on the business and acquired certain properties jointly with her son. On 9.5.1984, the assessee instituted a suit before the Subordinate Judge's Court, Erode against her son for division of the property known as SRM Lodge, Erode and the Suit ended in a compromise and a compromise decree was passed on 7.8.1984 and under terms of the compromise, the assessee was entitled to the shops in the ground floor and she was to discharge the loan of Rs.98,000/- and the son of the assessee was entitled to life interest in the lodge building situate in the first floor of the property, 'SRM Lodge' and after him, the same should go to his male children. On 16.4.1987 the assessee executed a deed of partition, at the intervention of panchayatdars, with a view to settle the dispute with her son and under the deed of partition, the assessee was allotted the property at Door No.29, Pumping Station Road, Erode absolutely. She was also granted the life interest both in the shops in the ground floor and the lodge in the first floor of the building, ' SRM Lodge' which should go to her son absolutely after her death. Under the deed of partition, the son of the assessee was allotted the property at No.13, Pumping Station Road, Erode. On 1.8.1987 the assessee along with her son executed a deed of lease in respect of the properties; (i) No.29, Pumping Station Road, Erode, (ii) Ground Floor in SRM Lodge, and (iii) No.13, Pumping Station Road, Erode in favour of the assessee's husband and her two daughters for a sum of Rs.16,000/- per annum for a period of eight years.

3. The Gift-tax Officer was of the view that by the partition deed dated 16.4.1987, the property at No.13, Pumping Station Road, Erode absolutely belonging to the assessee was allotted to the assessee's son which involved a gift of Rs.1,50,000/- being the value of the property. He also held that the lease amount fixed was much lower than the rent which was received during the earlier assessment years and brought the transaction to gift-tax under section 4(1)(a) of the Gift-tax Act. The assessee preferred an appeal before the Commissioner of Income-tax (Appeals) against the order of assessment made under the Gift-tax Act. The assessee pleaded that there was a family arrangement. The Commissioner of Income-tax (Appeals) held that there was no reference to the family arrangement in the deed of partition and the allotment of property in favour of the assessee's son could only be termed as a gift. He also held that the lease amount fixed was less than the market rent and in this view of the matter, he confirmed the order of the Gift-tax Officer.

4. The assessee carried the matter in further appeal before the Income-tax Appellate Tribunal. The Appellate Tribunal took into account the nature of the dispute in the family of the assessee and the facts of the case and also the circumstances which led to the execution of the partition deed and lease deed, and held that only to solve the family dispute and to bring harmony to the family, the transactions were entered into and there was a family arrangement which did not constitute 'gift' within the meaning of sections 2(xii) and 4(1)(a) of the Gift-tax Act. The Appellate Tribunal also held that the transactions were involuntary in nature and therefore there was no question of levy of gift-tax. In this view of the matter, the Appellate Tribunal cancelled the order of assessment for the assessment year 1988-89

levying gift-tax and allowed the appeal preferred by the assessee. Against the order of the Appellate Tribunal, the Revenue sought for a reference and the Appellate Tribunal, on the basis of the directions of this Court, referred the questions of law mentioned above.

5. The assessee was served, but, in spite of that, there is no representation for the assessee. Mrs.Pushya Sitharaman, learned senior standing counsel appearing for the Revenue submitted that the Appellate Tribunal was not correct in holding that there was a family arrangement and according to her, the assessee was the owner of the property at No.13, Pumping station Road, Erode and the property was transferred in favour of the assessee's son who had no pre-existing right in the property and the transfer was without any consideration. Learned senior standing counsel submitted that the assessee's son originally had no interest in the property at No.13, Pumping Station Road, Erode and hence, the transaction is only a gift as the transaction was entered into voluntarily and without consideration.

6. We have carefully considered the submissions of the learned senior standing counsel for the Revenue. The essentials of a family arrangement have been the subject matter of consideration in several decisions of this Court as well as by the Supreme Court. The Supreme Court in KALE v. DY. DIRECTOR OF CONSOLIDATION (AIR 1976 S.C. 807) laid down the following principles essential for family arrangement:-

"1. The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

2. The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

3. The family arrangements may be even oral in which case no registration is necessary;

4. It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of section 17(2) (sic) (Sec.17(1)(b)?) of the Registration Act and is, therefore, not compulsorily registrable;

5. The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

6. Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

7. The Supreme Court in SK.SATTAR SK.MOHD. v. GUNDAPPA AMABADAS (1 996) 6 SCC 373) has held that there is no transfer in the case of a family arrangement and laid down the law as under:-
" A family arrangement, on the contrary, is a transaction between members of the same family for the benefit of the family so as to preserve the family property, the peace and security of the family, avoidance of family dispute and litigation and also for saving the honour of the family. Such an arrangement is based on the assumption that there was an antecedent title in the parties and the agreement acknowledges and defines what that title is. It is for this reason that a family arrangement by which each party takes a share in the property has been held as not amounting to a 'conveyance of property' from a person who has title to it to a person who has no title."

8. The Supreme Court in the case of LAKSHMI AMMAL v. CHAKRAVAHTHI (AIR 1999 S.C.3363) has laid down the basic features of a family arrangement. Applying the principles laid down by the Supreme Court in the above cases, it is clear that the assessee's husband was declared an insolvent and after that, the assessee along with her son carried on the business and acquired certain properties. Though one of the properties was acquired in the joint names of the assessee and her son, a dispute seems to have arisen and it is stated that the assessee's son was a chronic drunkard and he was picking up quarrels in the family and he ultimately died on 8.11.1990 when he was 38 years old. The Appellate Tribunal held that the conduct of various members of the family showed that the family members intended to maintain peace in the family and to bring harmony in the family and they also wanted to avoid possible disputes by the heirs of the assessee at a later date. Therefore a panchayat was convened and a family arrangement was arrived at. The Appellate Tribunal has found that the family arrangement was a bona fide one.
9. As far as the property which is subject matter of partition is concerned, we hold that the proposition No.5 laid down by the Supreme Court in Kale's case (AIR 1976 SC 807) would apply and the Supreme Court held that even if one of the parties to the settlement had no title, but under the arrangement the other party relinquished all his claims or titles in favour of such a person and acknowledged him to be the sole owner, then the antecedent title must be assumed and the family arrangement would be upheld. Further, it was held that even a semblance of claim in the property by a member would be sufficient to validate the family arrangement. It is clear from the facts of the case that the assessee had recognised the rights in favour of her son in the property allotted in his favour in the partition.
10. The Supreme Court in LAKSHMI AMMAL v. CHAKRAVAHTHI (AIR 1999 SC 3363) has held that it is not necessary that the parties being the members of the family and claiming right in the property are in law entitled to some share and once the basic features of family arrangement, viz., disputes have been raised by the parties and settled in a panchayat and the parties have also been put in possession of the property in question, the document should be held to be a valid family arrangement, though the document

may be termed as a deed of partition. It is also well settled that it is not necessary that the arrangement should be among all members of the family arrayed one against the other and the prime factor is that it should be in the interest of the family (vide: Mulla Principles of Hindu Law (18th Edition, Vol.I), paragraph 248B at page 446).

11. We find that the Appellate Tribunal has found that there was a bona fide family arrangement to resolve the family dispute and the principle laid down by the Supreme Court in Kale's case (AIR 1976 SC 8 07) is that the antecedent title of the son must be assumed and the family arrangement should be upheld. We therefore hold that the fact that there was a panchayat in which the disputes between the members of the family were settled clearly shows that the arrangement entered into between the assessee and her son was a family arrangement and consequently, we hold that the Appellate Tribunal was right in holding that there was a valid family arrangement to resolve the disputes in the family and to bring harmony to the family. Similarly, we are of the view that no exception could be taken to the opinion arrived at by the Appellate Tribunal in respect of the lease deed executed by the assessee and her son in favour of the assessee's husband, who was adjudged as insolvent, and her two daughters for a sum of Rs.16,000/- per annum for eight years. The lease deed was found to have been executed in order to avoid any possible dispute by the heirs to whom nothing was allotted in the family arrangement and in order to have a harmony among the family members. Hence, the transaction did not constitute a gift within the meaning of section 2(xii) and 4(1)(a) of the Gift-tax Act as the transactions were entered into not voluntarily and there was no transfer of property involved in the transactions.

12. Accordingly, we answer both the questions of law referred to us in the affirmative, against the Revenue and in favour of the assessee.

Index:Yes
Website: Yes
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To

1. The Assistant Registrar,
Income-tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai 600 090 (five copies with records)

2. The Secretary,
Central Board of Direct Taxes, New Delhi (3 copies)

3. The Commissioner of Gift-tax,
Coimbatore.

4. The Commissioner of Income-tax (Appeals),
Coimbatore.

5. The Gift-tax Officer,
Ward I(2), Erode.